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Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Japan

Addendum

Comments by the Government of Japan on the report of the Special Rapporteur regarding her mission to Japan*

* Reproduced as received.

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The Government of Japan has sincerely addressed issues related to child sexual exploitation such as the sale of children, child prostitution and child pornography on the basis of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and is firmly committed to continue its efforts to address these issues. The Government of Japan welcomes the fact that the Special Rapporteur on the sale of children, child prostitution and child pornography has evaluated positively several measures taken by Japan regarding these issues.

However, despite the Government of Japan's request to the Special Rapporteur that the report be based on fact, regrettably the report contains inaccurate and insufficient statements on the actual situation in Japan and Japanese culture, as well as arguments not based on objective information. Therefore, the Government of Japan requests an explanation as to why the Rapporteur has not accepted certain comments of the Government and would like to clarify the Government's comments and opinions that were not reflected in the Rapporteur's report as follows:

1. Para 8: "However, based on information gathered from different stakeholders who deal with child victims of sexual abuse and exploitation, the Rapporteur understands that there are also boy victims, who are reluctant to report abuse and seek assistance due to fear, stigma or lack of access to gender-sensitive complaint and referral mechanisms."

The police provides necessary advice and guidance to juvenile victims of crime and their families by experienced juvenile guidance officials and counseling specialists at Juvenile Support Centers and police stations. The counseling rooms are soundproofed so that victims can feel relaxed to talk to the officials.

The police also offer a telephone counseling service called "Young Telephone Corner" and receive counselling requests by toll-free call and e-mail to make the service more accessible.

Since the police receive many counselling requests from children themselves (6,017 requests from boys and 7,418 from girls in 2014) and does not consider that it is difficult for boys to access to the service.

2. Para 9: "'Enjo kosai' is conducted without brokers or intermediaries"

It should be; "Enjo kosai" is often conducted without brokers or intermediaries.

3. Para 9, footnote 7: (reference to the U.S. State Department's Trafficking in Persons Report 2015)

Since the U.S State Department's Trafficking in Persons Report is written based on the U.S. State Department's own assessment, it is inappropriate to cite this document in an official UN report.

4. Para 10: "'JK business' is not infrequent among some junior and senior high school-aged girls (12-17), who consider it a part-time job with prestige."

It seems that this statement is not based on objective information such as results of surveys etc. targeting junior and senior high school-aged girls implemented in an appropriate way. Japan regards this sentence as inacceptable because it sends the wrong image of junior and senior high school-aged girls to the international community.

5. Para 15 : "The existence of a contract discourages investigations and prosecutions difficult."

The Government of Japan does not recognize the situation that the existence of a contract discourages investigations and makes prosecutions difficult.

6. Para 17: "They remain nonetheless a significant source of demand for child sex-tourism." and the footnote 11 (quotation of the U.S. State Department's Trafficking in Persons Report 2015)

The Government of Japan does not recognize the situation described in this sentence and the U.S. State Department's Trafficking in Persons Report did not demonstrate the basis of this sentence.

Moreover, since the U.S State Department's Trafficking in Persons Report is written based on the U.S. State Department's own assessment, it is inappropriate to cite this document in an official UN report.

7. Para 17, footnote 13: (reference to the U.S. State Department's Trafficking in Persons Report 2015)

Since the U.S. State Department's Trafficking in Persons Report is written based on the U.S. State Department's own assessment, it is inappropriate to cite this document in an official UN report.

8. Para 18 : Okinawa prefecture is particularly affected by poverty and higher unemployment, divorce and teen pregnancy rates; economic hardship and the weakening of families render children vulnerable to sexual exploitation.

There is no data or information that enables a logical explanation to the claim that "poverty and higher unemployment, divorce and teen pregnancy rates" are factors that make children in Okinawa vulnerable to sexual exploitation.

9. Para 19: "'Junior idols' are popular among some teenagers and constitute a big market."

It seems that the statement "'Junior idols' are popular among some teenagers" is not based on objective information such as results of surveys etc. implemented in an appropriate way.

Also the statement "'Junior idols' ... constitute a big market." is not based on objective data such as information about market size.

10. Para 19: "the demand side of sexual exploitation of children is overlooked"

There are no facts pertaining the statement that the demand side is being overlooked, since the police warns the demand side by appropriate announcement about the cases to the mass media when the police arrest the suspects of those crimes, or refer the cases to the prosecutors' offices for prosecution.

11. Para 24 : "According to international human rights norms and standards, child pornography is any pornographic representation of a child, regardless of whether the depicted child is real or virtual." and footnote 16.

The Government of Japan's stance on each document referred to in footnote16 is as follows. The Government considers that it is not clear that each document constitutes international human rights norms and standards. The Government understands that no General Comments regarding this issue has been published by the Committee of the Rights of the Child.

a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (article 2(c)):

The Government of Japan considers that the "child pornography" in the Optional Protocol does not include pornography of a virtual child.

b) Council of Europe Convention on Cybercrime (article 9-2 c):

Regarding article 9-2c of the convention, each party may reserve the right not to apply it (article 9-4). The Government of Japan reserved the right not to apply article 9-2c on the basis of article 9-4, when it concluded the convention.

c) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (article 20.2):

The related provisions of the convention are almost the same as the Optional Protocol.

d) Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on child pornography on the internet (A/HRC/12/23, para. 124 (b) (iii)):

The report of the Special Rapporteur only reflects her personal views or opinions which cannot be considered to form the international human rights norms and standards.

12. Para 26 : "Moreover, the legal requirement common to the two last types of child pornography ("which arouses or stimulates the viewer's sexual desire") is interpreted in a restrictive way and hence applied in extreme cases."

This is not true. In Japan, the authorities are appropriately applying punishment clauses including in cases concerning child pornography defined in article 2 paragraph 3 (ii) and (iii).

13. Para 26 : "The Special Rapporteur noted that this definition is narrower than the one contained in article 2 (c) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography."

The Government of Japan considers that the definition of "child pornography" in the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children is in conformity with that of the Optional protocol. The term "for primarily sexual purposes" in the definition of "child pornography" on the Optional Protocol has the same meaning as the phrase "which arouses or stimulates the viewer's sexual desire" in the Act.

14. Para 28 : "The Child Welfare Act defines a child as any person under the age of 18. The age for sexual consent is set at 13, which constitutes a major difficulty in the prosecution of sexual crimes against children. The Civil Law sets legal adulthood at 20 years, which creates a social protection gap for 18-19 year-old persons who are not protected by the Child Welfare Act."

This is not true.

In Japan, the Child Welfare Act, the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and local ordinances provide that sexual acts against a child under 18 years of age can be punished regardless of the child's consent. Therefore, in the entire legal system, protection of children under 18 years of age including those over 13 years old is ensured.

The scope of the Child Welfare Act is under the age of 18, but it doesn't mean that those over 18 years old are not protected legally. The Penal Code and other related laws provide penal regulations regarding sexual exploitation. The Child Welfare Act has particular provisions of prohibition because children under the age of 18 must be further protected.

15. Para 28 : "Despite certain prohibitions contained in the Child Welfare Act (e.g. article 34), it does not protect children from child erotica, "JK services" and the phenomena of "junior idols" as commercial activities which are harmful for children, and should be amended accordingly".

Protection of children from harmful activities for them is legally assured under the Child Welfare Act (Article 34-1 paragraph (9)).

16. Para 28: "Similarly, the protection of children would be enhanced with amendments to the narrow definition of child abuse, and relevant perpetrators, of the Child Abuse Prevention Act (articles 2(2) and 3)."

Article 3 of the Act prescribes "No person shall abuse a child", and this prohibits not only child abuse from custodians as defined in Article 2 of the same Act, but also acts and inactions that lead to the harming of children's welfare. The acts prohibited by the same Act also include forcing children to be engaged in commercial activity that harm children's welfare. In addition, perpetrators could be subject to punishment under the penal code or related laws regardless of being a custodian.

17. Para 29 : "Article 22.3 of the latter (which prohibits amusement traders engaging persons under 18 in jobs involving entertaining guests) is not applied to "JK business", since not all forms of "JK business" are considered to be part of the amusement business.

The claim that Article 22.3 of the Law is not applied to "JK business" is incorrect. It is a fact that not all forms of JK business is not part of the amusement business, but there is some cases in which Article 22.3 of the Law was applied to "JK business." The application of the Law depends on business forms.

18. Para 32 : "Child consultation centers have been criticised for lacking sufficient facilities and specialised staff, and for not incorporating child participation measures into their work, despite the management guidelines of child consultation centers.."

When the child consultation centers provide support to the victims of child abuse, professional staff (e.g. child welfare officers, child psychology officers, psychiatrists) perform specialized support individually.

The management guidelines of child consultation centers prescribe "to respect opinion of child and custodian" as one of the considerations on operation.

19. Para 34 : "the 'Vision for Children and Young People' adopted by the Cabinet Office in 2010 makes a limited reference to sexual exploitation of children."

Although the intention of the term "limited" is not clear, the Government of Japan recognizes necessary measures are included in the "Vision for Children and Young People."

In addition, "Outline for the Promotion of Development and Support for Children and Young People," newly adopted in February this year, covers a broader reference to our policies on sexual exploitation of children.

20. Para 38 : "It is also believed that international pressure has played a role in enhancing the focus on combatting child abuse material in detriment of child prostitution."

This is not true. The police have also been actively investigating child prostitution cases.

21. Para 40 : "Investigators and prosecutors have been criticized for being reluctant to take up child pornography cases because the victims are not identified and their age is difficult to determine. The Special Rapporteur called on law enforcement and prosecutors to conduct proactive investigations and prosecutions to overcome such difficulties."

The police and the prosecutor's office have been actively conducting their investigation and prosecution even in cases in which a victim depicted in the photo cannot be identified by

proving that the victim is a child through age determination by a physician, and are not criticized for being reluctant to take up child pornography cases.

22. Para 41 : "The Rapporteur expressed concern over the high rate of suspension of sentences rendered for offences of sexual exploitation of children. Consequently, she urged the judiciary and authorities concerned to ensure the full implementation of convictions in order to avoid impunity for these crimes."

Japan is of the view that whether or not an act constitutes a criminal offense as well as its gravity which grounds the decision of indictment or non-indictment and the sentencing of the court, should be decided on the basis of evidence collected in each concrete case. In regard to cases of child sexual exploitation, Japan takes into account the seriousness of these crimes, and is taking strict action in each concrete case. The suspension of execution of the sentence in Japan is a system which allows the suspension of the execution of the sentence for a certain period of time, in light of circumstances, when sentencing a person to imprisonment etc.. When the person commits a further crime within the period of suspension, the suspension of execution of the sentence will be revoked and the person will be in prison for the period of the suspended sentence plus the period sentenced for the further crime. Therefore, it should not be regarded as "impunity".

23. Para 49 : "Moreover, the services provided are not adapted to their needs, and staff available is not specialized or adequately trained. Child victims of sexual exploitation are often stigmatized and treated as "juvenile delinquents". Their condition of victims is often ignored, which results in a denial of access to appropriate support."

The child consultation centers provide specialized support by child welfare officers, child psychology officers, and psychiatrists based on the extent of sexual damage.

Also the child welfare institutions employ doctors, nurses and psychologists in certain cases, and provide mental care for victims of sexual abuse.

The management guidelines of child consultation centers (P8-9) prescribe to "respect the human rights of child and custodian", "give top priority to children's best interests", and "respect the opinions of child and custodian" as considerations of their operations.

In addition, the child consultation centers determine the policy providing support based on necessary investigation and judgment from the medical, psychological, pedagogical, sociological and mental health points of view.

The support of children at the child consultation centers is performed individually with consideration to children's opinion, and the support does not intend to criticize the children. The Japan Legal Support Center (the JLSC) provides information concerning relevant laws and the appropriate point of consultation contact to a victim of crime including child victims of sexual abuse and exploitation. The JLSC can refer a victim of crime to an attorney. The JLSC supports crime victims by specialized and adequately trained staff and attorneys. The staff has to complete the special training program to prevent secondary damage. In regard to referral to an attorney, the attorney for a victim of crime has to be enrolled on the list of crime victims support panel of the Bar Association and must have experience and knowledge related to supporting crime victims.

24. Para 50 : "If the child victim or the parent decides not to file a complaint, the child consultation center reports the case to the police. Most of the offenders go unpunished, which is one the main challenges faced by staff at child consultation centers."

Based on the guidelines for treatment of child abuse, the child consultation centers discuss the possibility of prosecution of an act of child abuse by custodians as a criminal case with police and the prosecution office, whenever they consider that prosecuting the case will lead to correct recognition of the present situation and empowerment of the child.

In regard to the part that states "Most of the offenders go unpunished", there is no evidence or verifications on this statement. Regardless of whether the assailant is punished or not, the child consultation centers offer necessary support.

25. Para 51 : "Care workers are not specialised or adequately trained to assist child victims of sexual abuse and exploitation, and there is no adequate system to evaluate staff. Lack of specialised training of care workers affects their ability to gain the trust of children, who as a result might refuse to receive support services of consultation centers."

Care workers are employed as professionals. Every year, training organizations supported by the central government invite experts and clinicians to organize seminars for staff of temporary shelters and child welfare facilities on the assessment, understanding, and addressing sexual problems from the point of view of children's rights.

In addition, staff of the child consultation centers are evaluated based on the performance evaluation system established by each local government.

Based on these facts, the statements here seem to be not well grounded.

26. Para51: "Temporary shelters which are run by child consultation centers are often full."

In the Japanese fiscal year 2014, the number of temporary shelters where the average occupation rate exceeded 100% is only nine (7% of the total number of child consultation centers) and it cannot be said to be a nationwide tendency.

27. Para51: "Children under 13 are accepted as a priority, which has a negative consequence on child victims aged 13 and above."

Temporary protection is provided to child victims based on the level of emergency and necessity of protection, regardless of age.

28. Para 54: "...emphasis of one-stop crisis centers is on women and not children or girls..."

It should be modified to "...emphasis of one-stop crisis centers is mainly for women and not children or girls..." based on the facts. On the other hand, the Government of Japan would like to comment that more than half of the victims received by one-stop crisis centers in Osaka are children, as referred to in paragraph 53, "9% of the 983 victims were 0-9 years old, and 53% were aged 10-19."

29. Para 59: "A child-rights perspective and gender approach must also be introduced in the methodologies and training of care workers."

Regarding the protection of rights of the child and gender, each foster home established management guidelines that determine participation of staff in training seminars about protection of the rights of the child and seminars to learn how to conduct sex education, and third party evaluation is implemented to evaluate if the management of facilities is based on the guidelines.

Also, in the national facilities to support independence of children, training seminars about various themes including the protection of the rights of the child are organized for the staff of child consultation centers and child welfare institutions.

The Government is preparing the submission of a draft amendment of the Child Welfare Act and related laws to the National Diet for the purpose of clarifying the idea that children's appropriate care, healthy growth and independence, among others, should be ensured.